

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

J.A. BESTEMAN COMPANY,

Plaintiff,

File No. 1:07-CV-931

v.

HON. ROBERT HOLMES BELL

CARTER'S INC., et al.,

Defendants.

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MEMORANDUM OPINION AND ORDER

This matter is before the Court on Bankruptcy Judge Jo Ann C. Stevenson's sua sponte request for permissive withdrawal of the reference of adversary proceeding to the United States District Court for the Western District of Michigan. (Docket # 1, Ex. 1.) Judge Stevenson issued the sua sponte request on September 10, 2007. The sua sponte request and docket for the bankruptcy proceedings were transmitted to this Court on September 20, 2007.

Local Bankruptcy Rule 5011(e) provides that parties may file a response to a motion to withdraw the reference within ten days of being served with a copy of the motion. LBR 5011(e). None of the parties filed a response to Judge Stevenson's sua sponte request in this Court or in the proceedings before the bankruptcy court. The time period for filing a response to the sua sponte request has now expired.

Title 28, section 157(d) of the United States Code permits a district court to withdraw any case or proceeding referred to the bankruptcy court "for cause shown." 28 U.S.C.S.

§ 157(d) (LexisNexis 2007). The Sixth Circuit has not defined what constitutes "cause" for purposes of section 157(d). The Second, Third, Fifth, Seventh, and Ninth Circuits have all held that efficiency is a permissible factor for a district court to consider in determining whether to withdraw the reference. *Security Farms v. Int'l Bhd. of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997) (listing five factors district courts should consider, which included "the efficient use of judicial resources"); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993) (discussing five different factors district courts have considered, which included "considerations of efficiency"); *see In re Pruitt*, 910 F.2d 1160, 1168 (3d Cir. 1990) (discussing the Fifth Circuit's list of considerations, including "fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process"); *In re Powelson*, 878 F.2d 976, 983 n.9 (7th Cir. 1989) (referring to a possible list of factors, which included "conservation of debtors' and creditors' resources, [and] expediting the bankruptcy process"); *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 999 (5th Cir. 1985) (discussing a list of considerations, which included "fostering the economical use of debtors' and creditors' resources, and expediting the bankruptcy process"). *Accord In re Cyberco Holdings, Inc.*, 2005 U.S. Dist. LEXIS 25834, at *8-10 (W.D. Mich. Oct. 20, 2005) (Quist, J.) (discussing the Second, Third, and Ninth Circuits' standard for "cause").

The Bankruptcy Judge recommended withdrawal of the reference because:

[p]art of the relief sought by the parties in this Adversary Proceeding relies on rulings, orders and judgments of the Honorable Robert Holmes Bell of the United States District Court for the Western District of Michigan, made in Docket No. 1:06-cv-425 such that for purposes of efficient administration of

justice, the Honorable Robert Holmes Bell would be best suited to hear this Adversary Proceeding[.]

(Sept. 10, 2007 Sua Sponte Request ¶ 29.) The Court finds that cause has been shown in the form of efficiency based on the parties seeking relief that is in part based on the Court's prior rulings in *J.A. Besteman Company v. Carter's Inc.*, File No. 1:06-CV-425.

Accordingly,

IT IS HEREBY ORDERED that Bankruptcy Judge Jo Ann C. Stevenson's sua sponte request for permissive withdrawal of the reference of adversary proceeding to the United States District Court for the Western District of Michigan (Docket # 1, Ex. 1) is **GRANTED**.

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. § 157(d), Federal Rule of Bankruptcy Procedure 5011(a), and Local Bankruptcy Rule 5011(a), the reference of this adversary proceeding is **WITHDRAWN** and this matter shall be heard by the United States District Court for the Western District of Michigan.

Date: October 18, 2007

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE